revoke it — should also have full power to regulate the corporation in its occupation. As was well said in *Munn* v. *Illinois*, 94 U. S. 113, speaking of one who has entered on a public undertaking: "He may withdraw his grant (to the public) by discontinuing the use, but so long as he maintains the use he must submit to the control." Notwithstanding this undoubted police power of the state, it has been decided, and in spite of considerable adverse criticism, correctly, it would seem, that the legislation may not be such as to deprive one engaged in such public employment of the reasonable profits of his investment. *Smyth* v. *Ames*, 169 U. S. 467; 12 HARVARD LAW REVIEW, 50. But even under this liberal view, which certainly reaches the verge of the law, it is difficult to support the mileage book case. It was not contended by the railroad that the rate fixed by the legislature was so unreasonably low as to prevent its operating at a profit, which it would seem could be the only possible ground for the decision. In fact, it appears that similar tickets were actually sold by other roads at as low a rate. The decision was squarely placed by the court on the ground that it made an "exception in favor of a particular class," — those who can afford to buy tickets by wholesale. But how can it be favoritism when the statute expressly enacts that the ticket shall be sold to all? Would the court be prepared to hold that an act fixing a ferry fare at two cents was unconstitutional because it discriminated against that portion of the community which did not happen to have two cents? Yet that would seem a legitimate deduction from the actual decision. It is perhaps unfortunate that the New York court was not able to distinguish the second as well as the first case from the Supreme Court decision, for were the matter again brought before the latter court it is possibly not too much to hope that it might find the circumstances sufficiently changed to warrant a decision in favor of the constitutionality of the law.

TRIAL BY EIGHT JURORS. — The Supreme Court of the United States has recently decided that a provision in the constitution of Utah to the effect that in criminal trials, other than capital, a jury shall consist of eight jurors, is not in violation of any of the provisions of the Federal Constitution. *Maxwell* v. *Dow*, 20 Sup. Ct. Rep. 448. In view of the admission that the question involves the right of a state to do away entirely with trial by jury in state courts, and since this is the first decision on this particular point by the Supreme Court, the case is obviously of great importance.

The opinion involved the consideration of two distinct contentions made by the plaintiff in error. It was argued, first, that a trial by a jury of twelve in a criminal prosecution is a privilege or immunity of a citizen of the United States which, by section 1 of the Fourteenth Amendment, a state is forbidden to abridge. But the court held that the right to a trial by jury in a state court for a state offence had never been a privilege or immunity of a citizen of the United States, because the Sixth Amendment, which provided for trial by jury in criminal prosecutions, had been adopted to protect the people only against encroachments by the federal government, and did not apply to trials under control of the individual states. It was further contended that imprisonment after a trial before a statutory jury of eight was a deprivation of liberty without due process of law, and therefore again in violation of the Fourteenth Amendment. But the court expressed their opinion that trial by jury had never been affirmed

to be a requisite of due process of law, and that a trial and conviction was due process so long as it was in accordance with the law of the state, and so long as that law was not of an arbitrary or discriminating character.

On both points Mr. Justice Harlan delivered a vigorous protest. But as a logical conclusion of law, the opinion of the majority is undoubtedly correct; and from the standpoint of expediency there seems to be no danger in intrusting to the individual states the power to regulate the form of their trials. The decision is, moreover, in conformity with previous decisions of the state courts on the precise point, *In re McKee*, 57 Pac. Rep. 23 (Utah); and of the United States Supreme Court on analogous questions, *Walker* v. *Sauvinet*, 92 U. S. 90; *Missouri* v. *Lewis*, 101 U. S. 22. See 10 HARVARD LAW REVIEW, 440. The present decision was especially anticipated in *Hurtado* v. *People of California*, 110 U. S. 516, which decided that an indictment by a grand jury for a state offence was not constitutionally necessary, and further pointed out that the result reached in the principal case must logically follow.

As to the consequences likely to ensue from this decision, it is not probable that state legislatures have felt constrained in their legislation in anticipation of a contrary result, and therefore any immediate changes in the methods of trial in the various states need not be expected; but the decision certainly does bring to the attention of the state legislatures their powers over these matters, and in view of the discussion of late years as to the advisability of jury trials, it is possible that some novel legislation may result.

SALE OF THE PARTNERSHIP ASSETS BY LESS THAN ALL THE SURVIVING PARTNERS. — The nature of a partner's interest in the partnership assets is very neatly brought out in a recent Australian case. *Rees* v. *Duncan*, 21 Australian Law Times, 205 (Victoria). One of four partners died, and the partnership was thereby dissolved. Two of the surviving partners and the representatives of the deceased partner sold "all their right, title, and interest" in the partnership assets to the plaintiff. In a suit against a stranger for the conversion of the assets, the court held that the legal title to the partnership assets was vested in the surviving partners by survivorship as joint tenants, in trust for the firm, and that no legal interest was transferred to the plaintiff. Consequently the plaintiff failed in his suit.

The decision seems clearly right. The position of a partner as regards the partnership assets is wholly anomalous. The common law conception is that the legal property is in the partners as joint tenants. Yet so far is the mercantile idea that partnership is an entity recognized, that a partner cannot transfer his interest in specific property. Parsons' Partnership, 4th ed. § 178; *Nichol* v. *Stewart*, 36 Ark. 612. Though in the principal case the partnership was dissolved by the death of a partner, the partnership still subsisted in equity and in mercantile contemplation as a body which owns property and owes debts. Its existence could not be terminated until the business was wound up and final distribution made, and the survivors therefore have no more right to transfer property for other than partnership purposes after the dissolution than before. *Strauss* v. *Frederick*, 91 N. C. 121.

The principal case rightly held that the deceased partner's interest passed on his death to the surviving partners, disregarding the sporadic